



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

DEPT OF TRANSPORTATION
DOCKETS

11W-7 A 9 14

Southern Service Center
1800 Century Blvd., Suite 1700
Atlanta, GA 30345

In Reply Refer to: MC-EFS-SV

February 19, 2009

BYRON JOHNSON, PRESIDENT
Fancy Freight, Inc. PO Box 1554
Athens, AL 35612

FMCSA-2009-0100

RE: Request for Change in Safety Rating under 49 CFR section 385.17

Dear Mr. Johnson:

A compliance review conducted at Fancy Freight, Inc. on January 29, 2009, resulted in a proposed safety fitness rating of "Unsatisfactory". On February 2009, Fancy Freight, Inc. submitted a request to upgrade its safety rating based on corrective action that it has taken to come into compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and/or Hazardous Materials Regulations (HMRs).

Your request for an upgrade and the Safety Management Plan (SMP) you submitted did not include sufficient evidence to justify an upgrade to Fancy Freight, Inc.'s proposed safety rating, and it failed to demonstrate that adequate corrective actions have been taken to address the acute and/or critical violations cited during the last compliance review. As required by 49 CFR section 385.17(c) the carrier must submit a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

After reviewing your request, the SMP, and the evidence submitted, the Federal Motor Carrier Safety Administration (FMCSA) is **denying** your request. You have failed to provide sufficient evidence that the violations cited in the compliance review have been corrected and that Fancy Freight, Inc.'s current operation meets the safety fitness standard specified in 49 CFR section 385.5.

To change a safety rating this office has to be assured that corrective action has been taken and that the motor carrier's current operations meet the safety fitness standard specified in 49 CFR section 385.5. You may submit another request for a change to the proposed or final "Unsatisfactory" safety rating and SMP for reconsideration or petition for an administrative

review pursuant to 49 CFR section 385.15 (see 49 CFR section 385.17(j)) within 90 days of this denial. If you choose to petition under 49 CFR section 385.15, your petition must be submitted in writing to the Assistant Administrator, Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, W60-3 12, Washington, D.C. 20590. **The petition for an administrative review will not stay the pending prohibition on your operations of commercial motor vehicles in interstate or intrastate commerce unless you request a stay of your proposed unsatisfactory safety rating and such stay is granted.**

If Fancy Freight, Inc. chooses to submit another request for an upgrade to the proposed or final "Unsatisfactory" safety rating, in addition to the guidance already provided, you must include the following in your next SMP

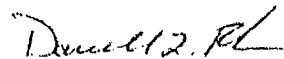
[1 A detailed description of Fancy Freight, Inc.'s system for monitoring and controlling HOS and verifying the accuracy of drivers' records of duty status (RODS). This description shall include the titles of personnel responsible for verifying the accuracy of RODS and checking for HOS violations; responsibilities of dispatchers in monitoring drivers' HOS; procedures for verifying the accuracy of RODS; description of supporting documents used to compare with the RODS; the frequency of RODS checks; personnel performing RODS audits; description and frequency of RODS audit summaries; and personnel responsible for administering the driver HOS disciplinary program.]

[2 A detailed description of Fancy Freight, Inc.'s disciplinary program specific to HOS compliance and RODS falsification. The disciplinary policy should include written reprimands or warnings, remedial training, suspensions without pay and termination. The policy should also include actions for violations of other Part 395 requirements such as failure to make or turn in RODS and failure to submit supporting documents. The "critical" violations and actions "to be taken by the company" need to be clearly defined.]

- [3. Periodic RODS audit summaries shall include at a minimum the number of RODS checked for compliance with the 10/11, 14/15, and 60/70 HOS limits, the number of 10/11, 14/15, and 60/70 hour violations found, the number of RODS checked for accuracy, the number of RODS determined to have been falsified, the names of drivers found in violation by violation date and type, and the action taken against the driver. Evidence of disciplinary action taken against drivers found violating the HOS regulations must be attached to the summary.]
- [4. A description of driver training in FMCSA HOS regulations to include a description of the training curriculum; the name(s) and qualification of the trainers; date(s) of the training; certification by all drivers upon completion of training; and an attendance roster signed by all drivers. If the training has not been completed, provide a plan for when the training will be accomplished.]
- [5. A description of Fancy Freight, Inc.'s accident prevention program including at a minimum, counseling of drivers involved in recordable crashes and discussions of accident countermeasures; periodic safety meetings to discuss accident prevention techniques, accident countermeasures, and defensive driving; disciplinary policy regarding multiple accidents and moving violations; remedial education of drivers having recordable crashes and a history of negligent driving; identification of drivers exhibiting dangerous or negligent driving behavior; and positive accident prevention measures.]

Please continue your efforts to improve your compliance with the FMCSRs and/or HMRs. Should you have any questions, please feel free to contact L. A. Johnson, Enforcement Program Coordinator of my staff by telephone at (404) 327-7400 .

Sincerely,



Darrell L. Ruban
Field Administrator

cc: Alabama Division Administrator